

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: Case No. 09-55685
AKBAL ZIA, Chapter 13
Debtor. Judge Thomas J. Tucker
_____ /

AKBAL ZIA, Adv. No. 09-5126
Plaintiff

v.

WASHINGTON MUTUAL BANK, ET AL.,
Defendants.
_____ /

**ORDER DENYING PLAINTIFF'S "EMERGENCY EX PARTE
MOTION FOR TEMPORARY RESTRAINING ORDER" (DOCKET # 3)**

This adversary proceeding is before the Court on Plaintiff's motion entitled "Emergency Ex Parte Motion for Temporary Restraining Order," filed on June 25, 2009 (Docket # 3, the "Motion").¹ Having reviewed and considered the Motion, the Court concludes that a hearing is not necessary, and that the Motion must be denied, for the following reasons.

On June 24, 2009, in Plaintiff's pending Chapter 13 bankruptcy case, the Court granted a motion for relief from stay filed by JPMorgan Chase Bank, National Association, formerly known as Washington Mutual Bank, with respect to the same property which is the subject of this adversary proceeding and the Motion. The stay-relief order, which was entered after

¹ The Plaintiff filed an identical motion, also on June 25, 2009, in her Chapter 13 bankruptcy case (Docket # 31 in Case No. 09-55685). The Court is entering a separate order in that case today, denying that motion.

Plaintiff failed to timely object or respond to the stay-relief motion, granted the following relief from stay in favor of JPMorgan Chase Bank:

IT IS HEREBY ORDERED that the Automatic Stay is hereby terminated as to Movant with respect to the property located at 6696 Michael Dr, Troy, MI 48098-1709 to allow Creditor to commence or continue its federal and/or state law rights to the property.

(Case No. 09-55685, Docket # 27). Plaintiff filed a motion for reconsideration of this order, on June 25, 2009, which this Court denied the same day. (Case No. 09-55685, Docket ## 29, 30).

Among other things, this Court noted the following in its order denying the motion for reconsideration:

Finally, the Court notes that nothing in this Order, or in the June 24, 2009 order for relief from stay, precludes the Debtor from challenging the validity of the sheriff's sale under state law, as a defense to any eviction proceedings (or otherwise) **in state court**.

(Case No. 09-55685, Docket # 30 at 2, emphasis added).

The relief that Plaintiff now asks this Court to grant, in her motion for temporary restraining order — *i.e.*, a temporary injunction against further efforts in state court proceedings to evict Plaintiff from the property at issue — would be inconsistent with the stay relief granted to JP Morgan Chase Bank. The Motion is in effect a second attempt to obtain reconsideration of the stay relief order. Because the Court is unwilling to grant reconsideration of the stay relief order, for the reasons stated in its June 25, 2009 order denying the first motion for reconsideration, the Court must also deny the motion for temporary restraining order. *See also* 11 U.S.C. § 363(d)(2)(“[t]he trustee may **use, sell, or lease property** under subsection (b) or (c) of this section **only . . . (2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362**”)(emphasis added). Because of the stay relief

order, Plaintiff must litigate her defenses to eviction, and her related challenge to the sheriff's foreclosure sale, in state court, rather than in bankruptcy court.

Accordingly,

IT IS ORDERED that the Motion (Docket # 3) is denied.²

IT IS FURTHER ORDERED that nothing in this Order precludes Plaintiff from challenging the validity of the sheriff's sale under state law, as a defense to any eviction proceedings (or otherwise) in state court.

Signed on June 26, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

² To the extent the Motion also seeks a preliminary injunction, that relief also is denied by this Order, for the same reasons stated in this Order.